

FILED
UNITED STATES DISTRICT COURT CLERKS OFFICE
FOR THE DISTRICT OF MASSACHUSETTS

2004 MAY 18 P 12: 12

C.A. No. 04-40051-NMG

U.S. DISTRICT COURT
DISTRICT OF MASSACHUSETTS

BOXCAR MEDIA, LLC, and)	
RACEWAY MEDIA, LLC,)	
)	
Plaintiffs,)	
)	
v.)	
)	
REDNECKJUNK, LLC,)	
DR. THOMAS P. CONNELLY, and)	
CONNELLY RACING, INC.,)	
)	
Defendants.)	

**DEFENDANTS' REPLY TO THE
PLAINTIFFS' SECOND SUBMISSION**

Now come the Defendants RedneckJunk, LLC, Dr. Thomas P. Connelly, and Connelly Racing, Inc., (hereinafter referred to as "RedneckJunk") and state:

1. Procedural History

On March 19, 2004, the Plaintiffs Boxcar Media, LLC and Raceway Media, LLC, (hereinafter referred to as "Boxcar and Raceway") did file this action with the Worcester Superior Court. The matter was removed to this Honorable Court on April 12, 2004. On April 14, 2004 Boxcar and Raceway filed a motion for a preliminary injunction. RedneckJunk filed an opposition on April 28, 2004. On May 3, 2004, Boxcar and Raceway did file a motion to supplement the record. This Honorable Court did allow RedneckJunk to file this reply.

2. Failure to Demonstrate Irreparable Harm

In their opposition to the motion for preliminary injunction, RedneckJunk pointed to the fact that Boxcar and Raceway had not provided facts sufficient to demonstrate real harm to Boxcar and Raceway. Boxcar and Raceway supplied anecdotal evidence that it claimed demonstrated confusion between the names RacingJunk.com and RedneckJunk.com. But, absent from the Boxcar and Raceway's submissions was evidence of actual harm from this alleged confusion.

Boxcar and Raceway did not demonstrate that the anecdotal evidence actually led to actual harm to the business. There is no demonstration of loss of revenue, decrease in number of website visitors, nor any other proof of actual damage.

Boxcar and Raceway seek to have the Court make the leap from the anecdotes to the conclusion that there was actual damage.


In their second submission, Boxcar and Raceway had the opportunity to supply facts demonstrating actual harm. But, Boxcar and Raceway provided no evidence of actual harm.

Attached hereto are discovery requests by RedneckJunk served upon Boxcar and Raceway simultaneously herewith. Accurate answers to these interrogatories and document production requests will demonstrate one way or the other whether there is actual harm to Boxcar and Raceway (see attached "**Exhibit 1**" - Defendants' First Set of Interrogatories Propounded to the Plaintiffs dated May 17, 2004 and see attached "**Exhibit 2**" - Defendants' First Request for Production of Documents Propounded to the Plaintiffs dated May 17, 2004).

This Honorable Court has the authority to shorten the time to respond to discovery requests, *Rule 33(b)(3)* and *Rule 34(b)* of the *Rules of Civil Procedure*. RedneckJunk's request that Boxcar and Raceway be ordered to respond to the *Rule 33* and *Rule 34* discovery requests within seven (7) days and to file with the Court those portions of the responses that Boxcar and Raceway claim demonstrate actual and irreparable harm. Responses to these discovery requests will resolve the issue of whether actual irreparable harm exists.

In conclusion, absent a demonstration of actual harm, the Plaintiffs Boxcar Media, LLC and Raceway Media, LLC's motion for a preliminary injunction should be denied or in the alternative, the Defendants RedneckJunk, LLC, Dr. Thomas P. Connelly, and Connelly Racing, Inc. request this Honorable Court to defer its decision until the Plaintiffs Boxcar Media, LLC and Raceway Media, LLC provide responses to *Rule 33* and *Rule 34* requests within seven (7) days.

REDNECKJUNK, LLC,
DR. THOMAS P. CONNELLY, and
CONNELLY RACING, INC.,
By their Attorney,



Robert F. Casey, Jr.
BBO# 077700
6 Lancaster County Road
Harvard, MA 01451
(978) 772-2223

Dated: May 17, 2004

DOCS\CONNELLY\REPLY.MEM

“EXHIBIT 1”

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

C.A. No. 04-40051-NMG

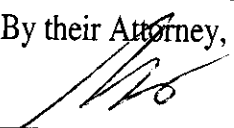
BOXCAR MEDIA, LLC, and)
RACEWAY MEDIA, LLC,)
)
 Plaintiffs,)
)
v.)
)
REDNECKJUNK, LLC,)
DR. THOMAS P. CONNELLY, and)
CONNELLY RACING, INC.,)
)
 Defendants.)

**DEFENDANTS' FIRST SET OF INTERROGATORIES
PROPOUNDED TO THE PLAINTIFFS**

1. Describe in detail and in quantitative terms all damages the Plaintiffs allege were caused by the Defendants stating the dates and amounts of each item of damage.
2. State the monthly gross receipts of RacingJunk.com from its inception to the present.
3. State the pretax income on a monthly basis of RacingJunk.com from its inception to the present.
4. State the after tax income on a monthly basis of RacingJunk.com from its inception to the present.

5. State the number of hits at RacingJunk.com on a daily basis from its inception to the present.
6. State the number of new classified advertisers at RacingJunk.com on a weekly basis from its inception to the present.
7. State the gross receipts of RacingJunk.com derived from classified advertisers on a monthly basis from its inception to the present.
8. List all detrimental effects to RacingJunk.com in the wake of RedneckJunk.com coming on line, including in your answer:
 - A. The number of hits per day for the month before and after RedneckJunk.com came on line; and
 - B. Any decrease in the number of new advertisers/customers resulting from RedneckJunk.com's website operation stated on a weekly basis.
9. Describe any and all actions taken by the Plaintiffs to hinder the Defendants' website operation other than this civil action.

REDNECKJUNK, LLC,
DR. THOMAS P. CONNELLY, and
CONNELLY RACING, INC.,
By their Attorney,



Robert F. Casey, Jr.
BBO# 077700
233 Ayer Road, Suite 12
Harvard, MA 01451
(978) 772-2223

Dated: May 17, 2004

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“EXHIBIT 2”

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

C.A. No. 04-40051-NMG

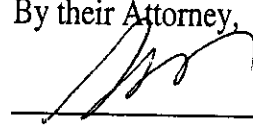
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Plaintiffs,)
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DR. THOMAS P. CONNELLY, and)
CONNELLY RACING, INC.,)
)
Defendants.)

**DEFENDANTS' FIRST REQUEST FOR
PRODUCTION OF DOCUMENTS
PROPOUNDED TO THE PLAINTIFFS**

1. Provide all income tax returns reflecting the operations of RacingJunk.com.
2. Provide any financial statements of the Plaintiffs prepared and/or submitted concerning operations of RacingJunk.com, Boxcar Media, LLC, and Raceway Media, LLC.
3. Provide any records including internet monitoring software reflecting website activity of RacingJunk.com for all periods for which the Plaintiffs seek damages and including all such records from January 1, 2002 to date.
4. Provide all documents reflecting confusion by consumers between "Rjunk.com", "RedneckJunk.com", and "RacingJunk.com".

5. Provide any documents supporting the Plaintiffs' claims for damages/relief.

REDNECKJUNK, LLC,
DR. THOMAS P. CONNELLY, and
CONNELLY RACING, INC.,
By their Attorney,



Robert F. Casey, Jr.
BBO# 077700
233 Ayer Road, Suite 12
Harvard, MA 01451
(978) 772-2223

Dated: May 17, 2004

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CERTIFICATE OF SERVICE

FILED
IN CLERKS OFFICE

I, Robert F. Casey, Jr., attorney for the defendants, do hereby certify that on this date I served a copy of the following documents by U.S. Postal Express Mail, postage prepaid, as follows:

2004 MAY 18 9 12 AM
U.S. DISTRICT COURT
DIST. OF MASS.

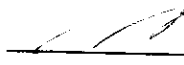
Defendants' Reply to the Plaintiffs' Second Submission

to:

Plaintiffs' counsel:

Attorney Brenda M. Cotter
Attorney Amanda C. Basta
BROWN RUDNICK BERLACK ISRAELS, LLP
One Financial Center
Boston, MA 02111

Sworn and subscribed to by me under the pains and penalties of perjury this 17th day of May, 2004.



Robert F. Casey, Jr.